IN THE HIGH COURT OF BOMBAY AT GOA

FIRST APPEAL NO. 107 OF 1999 AND

CROSS OBJECTION NO. 6 OF 2000.

First Appeal No. 107/1999.

1. State of Goa,
through the Dy. Collector &
Land Acquisition Officer,
Collectorate, Panaji, Goa.

2. The Executive Engineer,
Works Division I,
P.W.D., Panaji, Goa. ....
Appellants.

Versus

1. Agnelo Jose Augusto Pinto,
resident of St. Cruz,
Ilhas, Goa.

2. Dr. Carlos Alvito G. Pinto,
resident of Varca, Salcete,
Goa. ....
Respondents.

Shri G. Shirodkar, Addl. Government Advocate for the Appellants.

Shri R. G. Ramani, Advocate for the Respondents.

Cross Objection No. 6/2000.

1. Agnelo Jose Augusto Pinto.

2. Dr. Carlos Alvito G. Pinto both
residents of St. Cruz, Ilhas,
Goa. .... Cross
Objectors.

Versus

1. State of Goa
through the Dy. Collector

and Land Acquisition Officer,
Collectorate, Panaji, Goa.

2. The Executive Engineer,
Works Division I, P.W.D.,
Panaji, Goa. ....
Respondents.

Shri R.G. Ramani, Advocate for the Cross Objectors.

Shri G. Shirodkar, Addl. Government Advocate for the Respondents.

CORAM: S.S. PARKAR &
V. M. KANADE, JJ.

DATE: 18th JULY, 2005.

J U D G M E N T: (PER KANADE, J.)

The appellants State of Goa through the Deputy Collector and Land Acquisition Officer and the Executive Engineer, Works Division I, P.W.D. are challenging the Judgment and Order passed by the District Judge, North Goa, Panaji in Land Acquisition Case No.5/93. By the said judgment and order dated 9.7.1999 and which was reviewed in Review Petition No. 5/99 the District Judge was pleased to enhance the compensation awarded by the Special Land Acquisition Officer from Rs.4.50 and Rs.6./- per square metre to Rs.38/- per sq.m. which was further increased in Review Petition to Rs.89.25 per sq.m.

2. Brief facts which are necessary for deciding the present appeal are as under :-

The Government decided to acquire land for the purpose of

developing an institutional Complex at Curca, Bambolim, Calapur, Taleigao and Dona Paula. For that purpose a Notification was issued under S.4(1) of the Land Acquisition Act, 1894 on 28.1.1982. The total area which was sought to be acquired was 16277 sq.mts. Coomprising of New Survey No. 194(part) and 195 (part) of Calapur village (part of old survey No.601). The Land Acquisition Officer declared the Award on 15.10.1985 and granted the rate of Rs.6/- per sq.m. for cashew area and Rs.4.50 per sq.m. for sloppy area. The owners of the said land had claimed compensation at the rate of Rs.150/- per sq.m. The Special Land Acquisition Officer after declaring the Award, took possession of the land on 22.1.1996. The admitted position about the location of this land is that it was 400 mts. From Panaji-Agacaim road and 400 mts. From market place of Calapur from Agacaim side. The bus stop, public transport, churches, schools are within the radius of 500 mts. Goa Medical complex was within the radius of 2 kms. and Tamba Colony was within a radius of 2 kms. The land had all civic amenities like water, electricity, access, etc. and there were about 100 houses near the land which was sought to be acquired. Before the Land Acquisition Officer, the claimants relied on the Award granted in respect of part of old survey No.601 which was acquired under Notification under Section 4(1) which was published on 26.6.69 and which the Addl. District Court in LAC No.79/86 in Reference under S.18 had granted the price of Rs.30/- per sq.m. Reliance was also placed on a Sale deed dated 27.11.67 which was a land of 400 m. from the acquired land and the

land was sold at the rate of Rs.22/- per sq.m. Reliance was also placed on Sale deed dated 18.12.68 which was at a distance of 500 m. from the acquired land in the present case and land was sold at Rs.25/- per sq.m. which consisted of coconut garden. Reliance was thereafter placed on Sale Deed dated 1.3.69 which was about 1-1/2 km. from the acquired land in the present case. The land was sold at the rate of Rs.30/- per sq.m. Reliance was also placed on the Sale Deed dated 10.12.85 which 1 km. From the acquired land and which was sold at Rs.140/- per sq.m. as per the agreement of sale dated 20.8.1982 and lastly the claimants relied on Sale Deed dated 23.7.86 which was a land 1 km. from the acquired land and the rate was Rs.150/- per sq.m. as on 28.12.81 as per the agreement of sale on the said date. The claimants examined an expert Sakharam Bhende, AW.6 who gave his opinion that the value of the acquired land was at the rate of Rs.90/- per sq.mt.

3. Against the order passed by the Land Acquisition Officer, Reference was filed before the District Court who which was pleased to increase the compensation by Judgment and Order dated 9.7.1999 to Rs.38/- per sq.mt. Against the said Order, the Government filed an appeal being First Appeal No.107/1999. After the District Court enhanced the compensation to Rs.38/- by Order dated 9.7.99, a Review Petition was filed in this Court being Review Application No.5/1999 in which it was contended that there was an arithmetical error committed by

the District Judge in calculating the compensation awarded to the applicants. This Review Application was allowed by Order dated 24.1.2000 and accordingly the compensation awarded was corrected to Rs.89.25 from Rs.38/- . By that time, the First Appeal had already been filed by the State Government on 18.7.2000. Accordingly the grounds of objection were also amended and the Order passed in Review Petition was also challenged in this First Appeal.

Submissions:

4. Shri Shirodkar, the Addl. Government pleader has taken us through the judgment and order of the Reference Court as also the evidence adduced by the parties before the Special Land Acquisition Officer. He submitted that the Reference Court had erred in relying on the agreement of sale dated 28.12.81 which was referred to in the Sale Deed dated 23.7.1986 at Exh.AW.1/N. He submitted that the Trial Court had erred in relying on the said agreement of sale for the purpose of coming to the conclusion that the price of adjoining land on the said date was Rs.150/- per sq.mt. On the basis of the alleged agreement of sale dated 28.12.1981. He submitted that the actual copy of the said agreement of sale dated 28.12.81 had not been produced by the respondents. He further submitted that from the sale deed dated 23.7.86 no reference has been made to the agreement of sale dated 28.12.81. He submitted that the only reference in the sale deed was

found in the recital in which a bald statement was made that an amount of Rs.40,000/- was paid on 28.12.1981 towards the agreement of sale. He submitted that the rate which was fixed at the time of agreement of sale was not mentioned. He has invited our attention to the Sale deed dated 23.7.86 and has taken us through the entire sale deed and has submitted that reference of payment of Rs.40,000/- on 28.12.81 was made as an afterthought in 1986 in order to show and to create evidence that the rate of the adjoining land was Rs.150/- per sq.mt. He therefore submitted that the alleged agreement of sale dated 28.12.81 was sham and bogus as a copy of which was neither produced nor any particulars as to whether it was oral or written were mentioned in the sale deed which was executed on 23.7.86.

5. He submitted that the trial Court therefore erred in coming to the conclusion that the agreement of sale was executed on 28.12.81 when in fact there was no evidence to suggest that such an agreement of sale had been executed between the parties. He submitted that therefore the finding of the trial Court was not based on any documentary evidence.

6. He further submitted that the trial Court erred in coming to the conclusion that deduction of 30% was required to be taken into consideration towards its development and therefore after deducting 30% from Rs.150/- per sq.m. and a further deduction of Rs.7/- per

sq.m. considering the distance from the Highway is also erroneous. Shri Shirodkar, the learned Addl. Government pleader further submitted that this Court had disposed of First Appeal No.69/92 and 34 other appeals and had reduced the compensation awarded by the Land Acquisition Officer by 50% by Judgment and Order dated 3rd August, 1996 in respect of several plots acquired under the very same Notification dated 25th January, 1982 and the Division Bench of this Court had awarded compensation ranging from Rs.12.50 to Rs.20/- per sq. mt. He submitted that the land in respect of which compensation was awarded by this Hon'ble Court was in respect of plot No.194-C and 195-C, whereas in the present case the land was adjacent to the said plot in 194-B and 195-B. He submitted that the Reference Court therefore could not have awarded higher amount to plots bearing Nos.194-B and 195-B which were of a similar nature as plots involved in F.A. No.6/1995 particularly when in the Reference Court had enhanced the compensation subsequent to the Order passed by this Hon'ble Court. He however candidly admitted that the order passed by this Court in F.A. No.69/92 dated 3rd August, 1996 was not brought to the notice of the Reference Court. He submitted that the High Court having fixed the rate of compensation in the common appeals which was not permissible in law for the Reference Court to award higher compensation in respect of plots which were similar in respect of which compensation was fixed by this Court.

7. Shri Shirodkar, learned Addl. Government pleader further invited our attention to the Judgment and Order passed by this Court on 3rd August, 1996 and pointed out that the land owned by the respondents was on the contrary on a sloppy land and therefore the price awarded by the Land Acquisition Officer was correct. He relied on the Judgment of the Supreme Court in the case of ***The Land Acqusition Officer, City Improvement Trust Board, Bangalore v. H. Narayanaiah, etc.*** reported in A.I.R. 1976 S.C., 2403 and in the case of ***Special Land Acquisition Officer & Anr. v. Mariano Caetano Clarimundo Francisco Jose de Piedade Menezes*** reported in 2005 (2) All M.R. 371 and also in the case of ***Panna Lal Ghosh and others v. Land Acquisition Collector and others*** reported in 2004 AIR SCW 66.

8. The learned counsel appearing on behalf of the respondents submitted that the Reference Court had correctly relied on the agreement of sale dated 28.12.81. He submitted that the provisions of the Land Acquisition Act was amended in 1984 and Section 51A was added to the said Act. He submitted that by virtue of Section 51A it was no longer necessary to prove the sale deeds by examining the owners of the said land and only certified copies of the sale deeds could be produced to prove the said documents. He submitted that the Judgment and Order passed by this Court by Order dated 3rd August, 1996 was distinguishable on various grounds. He submitted that the law as laid down by the Supreme Court at the time when the Judgment

was delivered by this Hon'ble Court on 3rd August, 1996 was that Sale deeds which were not proved could not be taken into consideration. The sale deed on which reliance was placed by the claimants was not proved and therefore though this sale deed may have been produced by the said claimants in the said First Appeal, reliance was not placed by the High Court since the vendor had not been examined and therefore it was not proved. However he submitted in the present case the vendor had been examined and the sale deed was duly proved and the vendor had in his evidence stated that the agreement of sale between the parties was executed on 28.12.81. He submitted that there was no relation between the respondents and the said vendor and there was no reason to disbelieve his testimony particularly when he was not cross-examined by the Government Advocate. He further submitted that the Division Bench of this Court had in the said case determined the value of the land on the basis of the proximity of the road and accordingly had fixed the price depending on the location of the land from the proximity of the road. He submitted that the Supreme Court has now held that while determining the price of the land, proximity of the road need not be the only criteria as it was possible that a land which was away from the road could fetch a higher a higher price. He further submitted that another ground for distinguishing the Judgment dated 3rd August, 1996 passed by this Court was that the land in question in the said case was Survey No.195-C and 194-C, both of which were tenanted lands, whereas the land owned by the respondents

namely Survey No.194-B and 195-B were freehold land. He invited our attention to the evidence of the vendor AW.4 Umakant Kenkre. He further submitted that even otherwise there were other sale deeds which were brought on record and which were not considered by the Reference Court. He submitted that the adjoining land was acquired in 1969 and the Reference Court had awarded Rs.30/- per sq.m. for the adjoining land which was acquired pursuant to Notification issued under S.4(1) on 26.6.69. He submitted that if increase at the rate of 10% at compound rate was added to Rs.30/- , the price would come to Rs.110/- in 1981. He submitted that therefore even on the basis of the said Award of 1969, price at the rate of Rs.89.25 was reasonable. He further submitted that the agreement of sale dated 28.12.81 was proximate in time and therefore sufficient material on record to indicate that the said agreement was in fact executed on 28.12.81 and because the sale deed was executed in 1986. There was no occasion for the vendor AW.4 to retain a copy of the agreement of sale. He relied on a Judgment of the Supreme Court in the case of ***Land Acquisition Officer Revenue Divisional Officer, Chittor v. L. Kamalamma (Smt) dead by LRS and others*** reported in (1998) 2 S.C.C. 385. He also relied on other judgments of the Supreme Court in the cases of ***Manjunath Anandappa Urf Shivappa Hanasi Tammany's and others*** reported in (2003) 10 S.C.C., 390, ***Padma Sundara Rao (dead) and others v. State of T.N. and others*** reported in (2002) 3 S.C.C., 533, ***Bharat Petroleum Corpn. Ltd. And another v. N.R. Vairamani***

and another reported in (2004) 8 S.C.C., 579 and ***Punjab National Bank v. R.L. Vaid and others*** reported in (2004) 7 S.C.C. 698 in support of the said submission. The learned counsel for the respondents did not press the grounds raised in Cross-Objection.

Findings and conclusion :

9. In the present case the claimants have examined in all six witnesses and have produced six sale deeds and Judgment of the Addl. District Court in LAC No.79/86 in respect of adjoining land acquired pursuant to Notification issued under S.4 on 26.6.69 in which price of Rs.30/- per sq.m. was awarded by the Reference Court. The Claimant has also produced document of description of property parts which were subject matter of sale deeds at Exh.AW1/M and AW1/N vide Exh.AW1/O. The claimants have also examined the vendors in respect of the five sale deeds for the purpose of proving the sale deed and for the purpose of proving the said transaction. Claimants have also examined an expert valuer Sakaram Bhende who has been examined as AW.6 who has fixed the value of the acquired land at Rs.90/- per sq.m. AW.1 Agnelo Jose Pinto has stated that he he is applicant No.1 and holding the Power of Attorney for applicant No.2. After giving the various dates of the Notifications issued by the Government and the amount awarded by the Land Acquisition Officer, he has further stated that since the amount awarded was neither paid nor deposited he had filed a Writ Petition being W.P. 191/86. A certified copy of the said order was

produced on record. He has produced old Survey No.601 out of which the said plot is part of the old Survey No.601. A certificate in respect of the old Survey number and its xerox copy along with the transaction is also produced. He has stated that new Survey number came into force from 1972 to 1974 and at that time there were 100 houses existing in the corresponding new survey number which included survey No.194 and 195. He has further stated that the suit plot was a flat land and did not involve any cost for development and therefore was having potential for construction at the time of acquisition. He has stated that the suit plot was having civic amenities like water, electricity, road and shops. He has further given the details of the suit plot and the distance from the Panaji/Agacaim road and from the market place of Calapur. He has further stated that facilities like transport, church, schools, bus-stop were available within the radius of 500 m. from the suit plot. He has further stated that the Goa Medical complex was under consideration at the time of acquisition and it was at a distance of 2 kms. from the suit plot by road and the Vasudev Tamba Colony was at a distance of about 2 kms. from the suit plot. He has further brought on record sale deeds of the adjoining land. This witness has therefore in his evidence tried to establish that right from 1969 to 1982 the price of land had increased gradually from Rs.30/- in 1969 to Rs.150/- in 1982. Though this witness was cross-examined at length, his testimony has not been shaken. In cross-examination attempt was made to suggest that the land in question was basically an agricultural land and was

used for agricultural purpose only and that the suit plot was partly a cashew grove and partly a sloppy land. However, in cross examination the witness has reiterated that the land had building potentiality. The claimant has thereafter examined AW.2 Caetano Botelho. He was shown a sale deed at Exh.AW1/L and he has admitted that he had purchased the plot of land admeasuring 310 sq.m. at the rate of Rs.30/- per sq.m. on 1.3.69. The land was situated at Merces in the ward Dom Joao Palmar. Thereafter the claimant has examined AW.3 Jose Estevam Pinto who has stated that his mother had sold a plot of land of 406 sq.m. at the rate of Rs.25/- per sq.m. and it was situated at St. Cruz. He has identified Exh.AW1/K as the sale deed. Thereafter AW.4 Umakant Kenkre has been examined, who has proved the sale deed in respect of a plot of 510 sq.m at the rate of Rs.150/- per sq.m. which was situated at St. Cruz. He has stated that this sale was made pursuant to an agreement entered into with Wilfred Lopez on 28.12.01 and that he had received an amount of Rs.40,000/- by cheque as advance payment. He has stated that the plot was situated about 100 m. from Panaji/St. Cruz road and was sold for the purpose of house construction. It may be noted that this is the sale deed on which reliance was placed by the Reference Court and inference was drawn that agreement for sale was executed between the parties on 28.12.81. Thereafter AW.5 Conceicao Dias has been examined and has proved Exh.AW.1/I. He has stated that he had purchased a plot of land of 467 sq.m. at the rate of Rs.22/- per sq.m. Thereafter AW.6 Sakaram

Bhende has been examined. This witness has stated that he was an Architect, Engineer and a valuer. He has stated that he had been appointed as a Government valuer in 1972 and he had done his B.E. Civil from Poona University in 1957 and completed his agricultural Diploma from Bombay University in 1986. He stated that he had worked from 1986 to 1995 in a private Company in Bombay and thereafter he had shifted to Goa in 1995 and established his office in Goa and since then he was doing valuation/plans of building and structural valuations. He has also stated that he had done many valuations in land acquisition cases. This witness has stated in detail the reasons why he was of the opinion that the valuation of the land in 1982 was fixed by him at Rs.90/- per sq.m. After having stated that the land is a flat land having cashew trees and fruit bearing trees and that the acquired land was Rs.30/- higher than the land near Margao/Panaji road, he has stated that there is a village market, high school and higher secondary schools, health centre, church, bank, shops and telegraph office within a distance of 1 km. From the acquired land and that there was a bus stop within 200 m. He has further stated that the electricity and water pipeline was available and was passing through the property which is 300 m. from the acquired portion. Further details regarding the residential house, Goa Medical complex and Tamba residential colony within a radius of 1 km. Also has been referred to in his examination-in-chief. Thereafter he has given his opinion that the land is suitable for construction of building for

residence since the ground was hard and rocky and the land is flat. He has referred to two sale deeds, one dated 10.12.85 which is at Exh.AW1/M in which the plot was sold for Rs. 140/- per sq.m. pursuant to an agreement of sale made on 28.4.82 and the second sale deed dated 23.7.86 at Exh.AW1/N where the land was sold at Rs.150/- per sq.m. pursuant to agreement dated 28.12.81. He has also considered award of Addl. District Court in LAC No.79/86 by which the amount was awarded at the rate of Rs.30/- per sq.m. with reference to the acquisition of 1969.

10. From the said evidence it can be seen that the land in question in our view obviously was suitable for construction of buildings for residence. The adjoining land was within the periphery of the land already developed. All civic amenities were available. This evidence has not been seriously disputed by the Government. The sale deeds have been duly proved. From the various sale deeds which have been exhibited and proved as also the Judgment and Order passed by the Addl. District Judge in respect of acquisition of 1969 clearly establish that the cost of land in the said area had gradually increased from Rs.30/- in 1969 to Rs.150/- in 1982. There is no reason to disbelieve the sale deeds which are produced on record. The Government also has not disputed the veracity of the sale deeds. It has not been suggested that the sale deed are sham or bogus documents. Even if we accept the value of the adjoining land was Rs.30/- in 1969 which was fixed by the

Addl. District Judge in another acquisition proceedings and which order passed by the Reference Court was not challenged by the Government and had become final, then increase at the rate of 10% per year from 1969 to 1982 if taken by compounding the 10% increase, the rate in the adjoining area in 1982 would come to Rs.150/- per sq.m. If 30% charges are deducted towards development and 10% towards other costs the value would still come to Rs.90/- per sq.m. in respect of the plot in question. Similarly if the last sale deed is taken into consideration which is sale deed dated 23.7.1986 at Exh.AW.1/N, in in this sale deed there is a reference of agreement dated 28.12.1981. The learned Addl. Govt. Pleader had vehemently submitted that since the original agreement of sale or a copy thereof had not been produced by the respondents or by the vendor who was examined as AW.4 no reliance could have been placed on the alleged agreement dated 28.12.81. During the course of his arguments he had invited our attention to the recitals of the said sale deed and submitted that firstly the rate of sale of the land was not mentioned in clause 9 of the sale deed where reference is made to the agreement of sale. He had further submitted that there is no reference whether the said agreement of sale was oral or was in writing. He further submitted that receipt of Rs.40,000/- by the vendor also had not been produced and it was therefore contended that the Reference Court had erred in coming to the conclusion that in fact there was an agreement of sale dated 28.12.1981. He submitted that this inference was not warranted as the

same could not be seen from the recitals of the sale deed of 1986. He had therefore submitted that the order passed by the Reference Court which was based only on the solitary instance of agreement of sale dated 28.12.1981 which itself was doubtful and therefore the order passed by the Reference Court was liable to be set aside. It is not possible to accept this submission made by the learned Addl. Govt. pleader Shri Shirodkar. The Reference Court first of all had not taken into consideration other documents which were brought on record by the claimants. The Reference Court possibly came to the conclusion that since agreement of sale dated 28.12.1981 was proximate in point of time, it was not necessary to rely on the other documentary evidence brought on record by the claimants. In our view, the Reference Court has not erred in relying on the agreement of sale dated 28.12.81. It is no doubt true that the vendor who is examined as AW.4 has not produced the original agreement of sale or its copy when he was examined on 6.10.97. However this witness in cross-examination has stated that at the time when he was examined he did not have a copy of the agreement of sale since it was executed prior to the sale deeds. This witness has not been cross-examined on other aspects at all. No suggestion has been put to him that the agreement of sale dated 28.12.1981 had not taken place at all and that it was incorporated in the sale deed at the instance of the claimants. Further there is no reason to disbelieve this witness as he has stated in his examination-in-chief that the said sale was made pursuant to an agreement entered

into with the said Wilfred Lopez on 28.12.1981 on which date he had received a sum of Rs.40,000/- by cheque as advance payment. This witness is not related to the claimant and he has no interest in the acquisition proceedings. Further from the perusal of the sale deed, it can be seen that clauses 9 and 10 read as under :-

> " (9) The Vendor has agreed to sell and the Purchaser has agreed to purchase the said plot no. 25 of the said property, more particularly described in the Schedule III hereunder written at or for the price of Rs. 76,500/- (Rupees seventy six thousand five hundred only) .
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> (10) The Vendor received an amount of Rs.40,000/- (Rupees Forty Thousand only) by Cheque SB 041529, dated 28th December, 1981 on the Union Bank of India, Panaji Branch being advance towards consideration in respect of plot No.25, of the said property, more particularly described in Schedule III hereunder written. "

Similarly clauses 1(a) and (b) read as under:

> " (a) Rs. 40,000/- (Rupees forty thousand only) paid, as aforesaid by Cheque No. SB 041529 dt. 28.12.1981, on the Union Bank of India, Panaji, paid at the time of the said Agreement for Sale; and
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> (b) Rs.36,500/- (Rupees thirty Six thousand five hundred only) now paid by Cheque No. SB 071534 dt. 23rd July, 1986, on Union Bank of India, Panaji. "

11. From the aforesaid averments, it can be seen that there is a specific reference of an agreement of sale though the rate at which the land was sold is not mentioned. Yet if clauses 9 and 10 of the recital is

read together, it can be seen that the price of plot No.25 is mentioned and out of the total price in clause 10, it is mentioned that an amount of Rs.40,000/- is received by cheque. The cheque number, the date of the cheque and the bank on which it was drawn also has been mentioned and the particulars of the plot has been described in Schedule III. Therefore it cannot be said that no agreement of sale was executed between the parties, further in the terms of the agreement in clause (1) it is stated that the total price and consideration of Rs.76,500/- was received and the manner in which it was received is mentioned in clauses (a) and (b). In clause (a) it is mentioned that Rs.40,000/- was received at the time of agreement of sale. Here also the cheque number, the date of the cheque and the Bank on which it was drawn has been mentioned. AW.4 has not been cross-examined on this point at all and it is not suggested to him by the Government that he had received Rs.40,000/- in respect of some other transaction. Therefore the submission of the learned Addl. Govt. pleader Shri Shirodkar that no agreement of sale was executed on 28.12.81 cannot be accepted. Further it can be seen from the other averments in the sale deed that the vendor and the other owners of the property had applied for conversion of the land from agricultural to non-agricultural purpose under S.32(1) of the Land Revenue Code of Goa and it was granted by the Collector on 19.1.1979. Further property was partitioned between the vendor and the co-owners by deed of partition dated 28th March, 1981 and it was entered in the Books of Registrar on

25.9.1982. It is therefore possible that initially therefore an agreement of sale was executed on 28.12.81 and subsequently after all the formalities had been completed the sale deed was executed in 1986. The finding therefore recorded by the Reference Court will have to be confirmed in respect of the existence of the agreement of sale dated 28.12.1981. Once the existence of the agreement of sale dated 28.12.81 is accepted that would sufficiently indicate the price of the land in the said area as on 28.12.1981 which was proximate in point of time to the notice which was issued under S.4 of the Land Acquisition Act on 28.12.1981.

12. However, over and above this particular document, there are other documents also from which an inference can be drawn that the price of land in the said area was the one which was granted by the Reference Court. As indicated earlier the order passed by the Addl. District Court in respect of acquisition initiated under S.4(1) Notification published on 26.6.1969 can also be taken into consideration. The Addl. District Judge had enhanced the price to Rs.30/- per sq.m. This judgment is exhibited at Exh.AW1/J. In this case 16227 sq.m. was acquired out of old survey No.601 which was belonging to the claimants. In this case the L.A.O. had awarded Rs.10/- for the coconut garden area and Re.1/- for the existing road area. This was enhanced to Rs.30/- . This order passed by the learned Addl. District Judge had become final as it was not challenged by the Government. Therefore

even Rs.30/- per sq.m. is taken as a base in 1969 and 10% increase is added per year to the said price, the price would be above Rs.110/- per sq.m. as in 1982. The Addl. Government pleader tried to distinguish land which was acquired in the said proceedings and had pointed out that the said land in which Rs.30/- per sq.m. compensation was awarded was closer to the market, whereas in the present case the land of the respondents was on a slope. He further invited our attention to the fact that the said land which was acquired in 1969 consisted of a coconut grove and was near the market, whereas the present case the land was a cashew grove and was situated on a slope. He submitted therefore that a distinction could be drawn between the two plots in question. We are unable to accept the said submission of the learned Addl. Government pleader. The Judgment of the Addl. District Judge in LAC No.79/86 has been brought on record by the respondents. In the said judgment, it has been observed that the said land land which was acquired was flat and it did not involve any cost for development and it had potential for building both for residential as well as for commercial purposes. The Addl. District Judge, after considering all the other sale instances had come to the conclusion that the market price of the said land was Rs.30/- per sq.m. This land admittedly was adjacent to the present land. Even in the said case the Addl. District Judge has given a finding that the land had building potential and argument of the Government pleader that it did not have building potential was not accepted. In our view if this was the position in 1969, in 1982

admittedly number of buildings had come up within the radius of 1 km. All civic amenities were admittedly available in respect of the said plot of land. The Goa Medical Complex, Tamba Colony and other institutions such as schools, markets were within the radius of 1 km. Therefore, in our view no distinction can be drawn between the adjoining plot which was sought to be acquired by Notification issued in 1969 and the present plot which was being acquired by Notification issued in 1982. Merely because the plot was acquired pursuant to Notification of 1969 was a coconut grove and was nearer to the market and the present plot a was a cashew grove, situated on a slope that by itself would not make any difference in respect of the building potential. It is well settled position in law that an average increase of 10% per year can be calculated for any plot of land. If such 10% increase is given to the prices which were fixed in 1969, at the rate of Rs.30/- per sq.m. then by 1982 the price would be about Rs.150/- per sq.m. Therefore this also is an additional evidence to suggest that the price as on 1982 was the one which was fixed by the Reference Court.

13. Thirdly, the other sale deeds which have been produced by the respondents clearly indicate the rise in price in the said area from 1969 to 1982.

14. The learned Addl. Government pleader Shri Shirodkar further had relied on the judgment passed by this Court in a group of appeals

in which reference had been made by the claimants and which had arisen out of the same notification as was issued in the present case. It is submitted that the Division Bench of this Court by Order dated 3rd August, 1996 passed in First Appeal No.69/92 and other First Appeals had reduced the compensation which was awarded by the Reference Court and had fixed the rate of compensation between Rs.12.50 to Rs.20/- per sq.m. according to the category of the land and classification made by the Division Bench. He submitted that the Division Bench of this Court had not accepted the Sale deed of 1986 or the agreement of sale dated 28.12.1981 and he further submitted that the Division Bench had discarded all the sale deeds which were produced by the claimants in the said case. He fairly conceded that the Division Bench order of this Court was not brought to the notice of the Reference Court. He however submitted that this order which was passed by the Division Bench which was in respect of the same Notification which was issued in 1982 was binding and on this ground also the order passed by the Reference Court was liable to be set aside. He has taken us through the judgment dated 3rd August, 1996 passed by the Division Bench of this Court.

15. The learned counsel appearing for the appellants submitted that the said case would be distinguishable on several grounds. He submitted that in the said case the claimants had not proved the sale deeds as per the law which existing at that time and had not examined

the vendor who had sold their property by virtue of the sale deeds. He further submitted that the Division Bench had classified the entire land on the basis of the proximity of the land from the road and had accordingly fixed the market value between Rs.12.50 to Rs.20/- per sq.m. He submitted that the Supreme Court in a recent case had held that the proximity of the land from the road could not be said to be the only criteria for the purpose of determining the market price of the land. He submitted that though the said judgment was delivered by the Division Bench of this Court and which pertained to the adjoining lands which were acquired by virtue of the same notification which was issued on 28.1.1982, yet since the sale deeds in the said case had not been proved, the said Judgment could not be relied upon as a precedent for the purpose of deciding the market value of the land in the present case. In support of the said submission, he relied on a judgment of the Supreme Court in the case of Land Acquisition Officer Revenue Divisional Officer, Chittor v. L. Kamalamma (Smt) dead by LRS and ors. Reported in (1998) 2 S.C.C. 385. He also relied on the judgment of the Supreme Court in the case of Padma Sundara Rao (dead) & ors. v. State of T.N. & Ors. Reported in (2002) 3 S.C.C. 533. He further relied on a Judgment of the Supreme Court in the case of Bharat Petroleum Corpn. and anr. v. N.R. Vairamani & anr. reported in (2004) 8 S.C.C. 579. On the contrary the learned Addl. Govt. pleader, Shri Shirodkar relied on the Judgment of the Supreme Court reported in A.I.R. 1976 S.C. 2403 in the case of the Land Acquisition Officer City Improvement

Trust Board, Bangalore v. H. Narayanaiah etc. He also relied on a Division Bench Judgment of this Court in the case of Special Land Acquisition Officer and Anr. v. Mariano Caetano reported in 2005 (2) All MR 371 and also on the judgment of the Supreme Court in the case of Panna Lal Ghosh & Ors. v. The Land Acquisition Collector and Ors. reported in 2004 AIR SCW 66.

16. The learned Addl. Government pleader Shri Shirodkar has relied on a Division Bench of this Court dated 3rd August, 1996 in a group of First Appeals arising out of the Order passed by the Reference Court seeking enhancement of compensation in respect of adjoining lands. He has submitted that the said Order dated 3rd August, 1996 was binding on the Reference Court.

17. In our view the said submissions of the learned Addl. Government Pleader cannot be accepted. Firstly in those cases though they were arising out of the same Notification dated 25th January, 1982, the sale deeds on which reliance was placed by the claimants in the said case has not been proved and therefore the Division Bench of this Court has not made a reference to the sale deeds in the said case. Though the same agreement of sale dated 28.12.1981 was relied upon by the claimants in the said case, since the said agreement of sale and the sale deed executed on 23.7.86 was not proved neither the Reference Court nor the Division Bench of this Court relied on the said sale deed. The

Reference Court in the said case had specifically observed that the Manager of the Branch was examined to prove that the amount of Rs.40,000/- was received by the vendor. The vendor himself was not examined. The Division Bench in its Order dated 3rd August, 1996 has recorded the submission made by the Advocate General that the documents had not been proved and yet reliance was placed by the Reference Court in the said case on the said documents and sale deeds. However the Division Bench in its judgment has not given any finding on the said submission made by the Advocate General. Further the Division Bench has fixed the market value taking into consideration the proximity of the land from the road and accordingly fixed the market value between Rs.12.50 to Rs.20.00 per sq.m. In our view the Division bench judgment of this Court dated 3rd August, 1996 cannot be said to be a precedent on the aspect of fixation of market value in the adjoining areas. Firstly, because in the present case the appellants have proved all the sale deeds by examining the vendors or their relatives on which reliance has been placed by him. Secondly, the Division Bench judgment has fixed the market value on the basis of the proximity of the land from the road and has awarded more price to the land which is near the road and less price to the land which is farther away from the road. The Supreme Court in a recent case reported in ***(1998) 2 S.C.C. 385*** in the case of ***Land Acquisition Officer Revenue Divisional Officer, Chittor v. L. Kamalamma (Smt) dead by LRS and Others*** has observed that merely because some portion of the land abuts the

main road, that does not mean that it would fetch a higher price because many a times customers prefer to stay in the interior far away from the main road and are willing to pay a reasonable higher price for that site. The Supreme Court in the said judgment in para 7 has observed as under :-

> " 7. The argument advanced by Shri Nageswara Rao that the classification by the Land Acquisition Officer was in order and ought not to have been interfered with by the reference Court or the High Court does not appeal to us. When a land is acquired which has the potentiality of being developed into an urban land, merely because some portion of it abuts the main road, higher rate of compensation should be paid while in respect of the lands on the interior side it should be at lower rate may not stand to reason because when sites are formed those abutting the main road may have its advantages as well as disadvantages. Many a discerning customer may prefer to stay in the interior and far away from the main road and may be willing to pay a reasonably higher price for that site. One cannot rely on the mere possibility so as to indulge in a meticulous exercise of classification of the land as was done by the Land Acquisition Officer when the entire land was acquired in one block and therefore classification of the same into different categories does not stand to reason. "

18. The judgment of the Supreme Court is squarely applicable to the facts of the present case also. Thirdly, the adjoining land in respect of which the First Appeals were decided by the Division Bench of this

Court were tenanted properties, whereas the present lands are freehold properties. It is therefore not possible to accept the submission made by the learned Addl. Government Pleader that the ratio laid down by the Division Bench in its Order dated 3rd August, 1996 will have to be followed by this Court also.

19. The learned Addl. Government Pleader had relied on the judgment of the Supreme Court in the case of Land Acquisition Officer reported in A.I.R. 1976 S.C. 2403 (supra)and on the judgment of the Division Bench of this Court reported in 2005 (2) All MR 371 (supra). In our view the ratio of the said judgments will not be applicable to the facts of the present case. In the present case the judgment given by the Division Bench of this Court in respect of adjoining lands, has been distinguished by us in the preceding paragraph. Further it is well settled law that reliance can be placed on decisions only if the facts and situations in both cases are identical. The Supreme Court in a recent case reported in ***Bharat Petroleum Corpn. Ltd. And another v. N.R. Vairamani and another [(2004) 8 S.C.C. 579].*** Para 9 reads as under :-

> " 9. Courts should not place reliance on decisions without discussing as to how the factual situation fits in with the fact situation of the decision on which reliance is placed. Observations of courts are neither to be read as Euclid's theorems nor as provisions of a

> statute and that too taken out of their context. These observations must be read in the context in which they appear to have been stated. Judgments of courts are not to be construed as statutes. To interpret words, phrases and provisions of a statute, it may become necessary for judges to embark into lengthy discussions but the discussion is meant to explain and not to define. Judges interpret statutes, they do not interpret judgments. They interpret words of statutes; their words are not to be interpreted as statutes. In *London Graving Dock Co. Ltd. v. Horton* (AC at p. 761) Lord MacDermott observed: (All ER p. 14 C-D)
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> " The matter cannot, of course, be settled merely by treating the ipsissima verba of Willes, J., as though they were part of an Act of Parliament and applying the rules of interpretation appropriate thereto. This is not to detract from the great weight to be given to the language actually used by that most distinguished judge, ... "

The observation made by the Supreme Court is squarely applicable to the facts of the present case.

20. In the result the submissions made by the Addl. Government Pleader cannot be accepted and the appeal filed by the State is

therefore dismissed and the Judgment and Order passed by the reference Court is confirmed. The Cross-Objection filed by the respondents is dismissed as it is not pressed.

S. S. PARKAR, J.

sl. **V. M. KANADE, J.**